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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
09/403,131	02/19/2000	Jens Eckermann	H01.2-8601	6871

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EXAMINER	
HARMON, CHRISTOPHER R	
ART UNIT	PAPER NUMBER

3721

DATE MAILED: 10/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/403,131

Applicant(s)

ECKERMANN ET AL.

Examiner

Christopher R Harmon

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 7-14 and 18-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-14 and 18-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Allowable Subject Matter

1. The indicated allowability of claim 10 is withdrawn in view of the newly discovered reference(s) to Hodder. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 1-3, 7-14, 18-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitation of setting up the transport boxes is unclear and indefinite. Phrases such as "their end-face side walls and their transverse webs" are unclear as to the subject referring to; ie. transport boxes or multi-piece packagings. "At least partly automatic bases" is unclear. The step of "folding open the base flaps which are hinged on oppositely lying side walls of the packagings and transport boxes and which are folded together." is confusing whether 1) the base flaps are hinged upon the side walls of the packagings or the boxes; and 2) what exactly is folded together and when.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Hodder (GB 2,055,350).

Hodder discloses a partitioned box for use for holding containers comprising a foldable blank with a bonded multi-piece packaging by a separable perforated tab 20; see figure 4. Hodder describes the method of use on page 2 lines 1-7 for automatically erecting the assembly and inserting articles and closing.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-3, 7-14, 18-19 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hodder (GB 2,055,350).

It is not certain whether or not Hodder provides for the all the limitations of the setting up procedure due to the box/packaging construction however the examiner takes OFFICIAL NOTICE that it would have been obvious to one of ordinary skill in the art to modify Hodder in order to set up the box appropriately for loading.

8. Claims 1-3, 7-9 and 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reichert (US 4,055,943) in view of Meyers (US 4,177,715).

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Reichert discloses a method for packing containers 30 into open cases/transport boxes comprising loading bottles 30 through openings in collar/multi-piece packaging 95 into boxes 108; see figure 2.

Reichert does not disclose erecting the cases with releasably fastening a multi-piece packaging inside (adhering) to a flat lying box, however Meyers teaches construction and use of a collapsed flat lying blank with a multi-piece packaging 60 inserted; see figure 5. The combined structure undergoes folding and gluing operations and formed into a collapsed tubular blank. The blanks are then set up or erected before use. It would have been obvious to one of ordinary skill in the art to use a box erecting method as taught by Meyers in the invention to Reichert in order to save space.

Lateral walls are hinged to one another and folded about fold lines of sidewalls.

Regarding claim 9, multi-piece packaging is not releasably fastened on lid flaps however at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to fasten the insert on lid flaps because Applicant has not disclosed that the particular box construction provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with fastening to the sidewalls because the bottles are inserted equally well.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R Harmon whose telephone number is 703-308-8643. The examiner can normally be reached on Monday-Thursday from 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 703-308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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EUGENE KIM
PRIMARY EXAMINER